BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF PHILIP E. CASSADY, Appellant, v. State of Washington DEPARTMENT OF ECOLOGY and KENMORE PRE-MIX COMPANY, Respondents.	PCHB NO. 87-66 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On April 3, 1987, Philip E. Cassady filed an appeal with the Pollution Control Hearings Board, contesting the Washington State Department of Ecology's ("DOE") Order No. DE 87-N156 which authorized the Kenmore Pre-Mix Company to appropriate public groundwater in the the amount of 250 gallons per minute to a maximum withdrawal of 200 acre-feet per year for gravel washing from a sand and gravel mining operation. A formal hearing was held in Seattle on May 22, 1987. Present for the Board were members Judith A. Bendor (Presiding), Lawrence J. Faulk, (Chairman) and Wick Dufford, Member. Court reporter Bibi Carter of Gene Barker and Associates recorded the proceedings.

Appellant Cassady appeared pro se. Respondent Department of Ecology was represented by Assistant Attorney General Peter R. Anderson. Respondent Kenmore Pre-Mix Company was represented by its attorney, David C. Hall, of Preston, Thorgrimson, Ellis & Holman.

Witnesses were sworn and testified; exhibits were admitted and examined. Briefs were submitted and argument was heard. From the foregoing, the Board makes these

FINDINGS OF FACT

I

On June 19, 1986, the Department of Ecology (the "Department") received Kenmore Pre-Mix Company's application to appropriate groundwater. (Number G1-2439) Kenmore proposed to withdraw 800 gallons per minute of water from a 370 foot deep well located at an elevation of approximately 550 feet, one mile northeast of the City of Snoqualmie in King County (SE 1/4 and NE 1/4 of the SW 1/4 of Section 20), on property owned by the Weyerhaeuser Company.

II

A notice of the application to appropriate was published in the weekly Valley Record newspaper beginning August 21, 1986 and ending August 28, 1986. This paper is circulated, in part, in Snoqualmie and North Bend. Eleven objections to the application were received in the 30-day comment period, including one from appellant.

III

The Department reviewed Kenmore's groundwater Application, which included a July 1986 groundwater resource evaluation prepared for the applicant by Associated Earth Sciences, Inc., consulted with the King County Building and Land Development Division, and conducted a site visit. On February 27, 1987, the Department issued a Report of Examination of Application recommending approval of withdrawal of 250 gallons per minute, for a yearly maximum of 200 acre-feet, provided that an approved measuring device be installed and maintained in accordance with RCW 90.03.360, WAC 508-64-020 through -040.

The Department's final Order No. DE 87-N156 issued March 3, 1987 concluded that "water is available for a beneficial use," and that appropriation "will not impair existing rights or be detrimental to the public welfare" and approved appropriation as recommended by the Report.

Since DOE's Report and hearing memorandum (at p. 8) concedes that a meter meeting the specifications of Ch. 508-64 WAC is required by the permit, we treat the meter as part of the Order on appeal. Similarly, the Report recommended that the 12-hour on/off cycle be observed. We treat the Order on appeal as incorporating this condition as well.

IV

By way of background, the proposed appropriation/withdrawal is on a site that has been used for sand and gravel mining for at least 25

years. King County has issued a mitigated DNS (declaration of non-significance) for the mining operation for processing and extraction of one million cubic yards of sand and gravel. The County has also issued an unclassified use permit for this operation. The legal propriety of the sand and gravel operation itself is not an issue in this appeal.

V

Respondent Kenmore currently leases 60 acres from Weyerhaeuser. The current well is 6-inches, 370 foot in depth, which is capable of withdrawing 60 to 80 gallons per minute. Kenmore originally planned to install a 12-inch well, to 370 foot depth, capable of obtaining 800 gallons per minute.

VI

Two aquifers underlie the proposed Kenmore well. The upper aquifer is unconfined, and exists at elevations 344 to 164 feet. The lower aquifer would be the source of the proposed withdrawals. It is found at below elevations of approximately 146 feet and is recharged by waters from the Snoqualmie River drainage system and from leakage from the upper aquifer. It is found in medium to coarse grain sands of non-glacial origin.

Kenmore conducted a pump test of the existing well. The test showed that 200 to 250 gallons per minute are available from the lower aquifer for 12 hours of operation. The consultant recommended that the well not be pumped more than 12 hours on and 12 hours off. DOE's consultant's review of the Application and of nearby well logs confirmed this conclusion. DOE's review, in part, relied on Kenmore's consultant's report.

Kenmore plans to recycle some of the water, the extent to which is not known.

VII

Five hundred feet from the well is an unnamed stream flowing past the southeast corner of the site. There are no wetlands on the 60-acre leased property.

Rainfall in the area is approximately 50 inches per year. About half that amount is available for infiltration and recharging of aquifers.

VIII

Appellant Philip Cassady and other individuals who testified against the proposed appropriation live in an area known as The Highlands. This area, as the name implies, is located at higher ground, at elevations 200 feet and more above the proposed well, and more than a 1,000 feet distance.

IX

The Highland's wells withdraw water from aquifers which are not related to the one Kenmore proposes to use. Some Highlands' residences with shallow wells have been experiencing water pressure drops and water shortages during the summer. These shallow wells withdraw water from a perched aquifer which is primarily directly replenished from rainfall. These wells will not be affected by the proposal, as the aquifers are not related.

An additional margin of safety is provided by requiring the 12 hour on and off cycle. This regime will limit the cone of depression and prevent the Kenmore well from affecting any wells in any aquifers which are more than 1,000 feet away.

X

The proposed appropriation will not detrimentally affect surface waters, nor deprive wildlife of habitat.

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

From these Findings of Fact, the Board reaches these Conclusions of Law

CONCLUSIONS OF LAW

I

The Board has jurisdiction over this appeal.

II

Using water for mining gravel is a beneficial use. RCW 90.54.020.

III

The requirements of RCW 90.03.290 have been met, specifically that water is available for appropriation, that appropriation will not impair existing rights, and that no detriment to the public welfare has been shown. See, Stempel v. Department of Water Resources, 82 Wn.2d 109, 508 P.2d 166 (1973).

IV

The appropriation is categorically exempt from State Environmental Policy Act threshold determinations and EIS requirements, subject to the rules and limitations in WAC 197-11-305. WAC 197-11-800(4).

However, WAC 197-11-305(i)(b) provides that a proposal is not exempt from SEPA if:

> (b) The proposal is a segment of a proposal that includes:
> (i) A series of actions, physically or functionally related to each other, some of which are categorically exempt and some of which are not: or

This appropriation is a segment of the gravel mining operation which was issued a mitigated Declaration of Non-significance by King County. This appropriation is therefore not exempt from SEPA.

V

We conclude that the appropriation, as approved, will have no probable significant adverse impact on the environment. WAC

197-11-340. See, ASARCO v. Air Quality Coalition, 92 Wn.2d 685, 601 P.2d 501 (1979).

VI

Since our review of the permit is conducted de novo, we are concerned with the credibility of the information the DOE brings to our attention in seeking to have its decisions sustained. As long as the Department's judgment is based on credible factual information supporting its conclusions, its statutory investigative duties under RCW 90.03.290 have been fulfilled. For DOE to rely on applicant's consultant's report in reaching its decision presents, therefore, only an ordinary credibility question. Here we found, de novo, that the information provided is believable.

From these Conclusions of Law the Board enters this

ORDER

Order No. DE 87-N156, allowing appropriation of public groundwaters up to 250 gallons per minute, with pumping limited to 12 hours on and 12 hours off, up to a maximum of 200 acre-feet per year, and requiring the installation and maintenance of an approved measuring device in accordance with RCW 90.03.360, WAC 508-64-020 through -040 is AFFIRMED.

DONE this 9th day of September, 1987.

POLLUTION CONTROL HEARINGS BOARD

JUDITH A. BENDOR, Presiding

WICK DUFFORD, Chairman

9/9/87

LAWRENCE J. FAULK, Member